In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:	)	
	)	Adversary Proceeding
TOPGALLANT LINES, INC.	)	
(Chapter 7 Case 89-41996)	)	Number 90-4202
	)	
Debtor	)	
	)	
	)	
	)	
TOPGALLANT LINES, INC.	)	
	)	
Plaintiff	)	
	)	
	)	
	)	
v.	)	
	)	
FIRST AMERICAN BULK CARRIER CORPORATION	)	
	)	
Defendant	)	

ORDER ON TRUSTEE'S MOTION TO COMPROMISE DISPUTED CLAIM

The Court presently has under advisement the Trustee's Motion to Approve a Compromise of the above-captioned adversary proceeding proposing settlement of the case

in exchange for payment by First American Bulk Carrier Corporation ("FABC") to the Trustee of the sum of $100,000.00. The application of the Trustee was supported by a voluminous analysis of the basis for his recommendation that the settlement is in the best interest of creditors.

A hearing was held to consider any objections to the application and an objection was filed and prosecuted by Southeastern Maritime Company, Inc., ("SEMCO"). A lengthy hearing was conducted on March 28, 1994, and a continued hearing held on May 2, 1994. Both SEMCO and the Trustee filed supplemental pleadings on May 6 and May 10 following the latest hearing which have been duly considered. Part of the proposed settlement includes a requirement that the settlement must be approved by this Court and consummated no later than June 1, 1994.

Because of the multiple hearings and the relatively short time between the most recent submissions of the parties and the June 1 deadline, it has been impossible to finalize a comprehensive order on the pending motion. However, I have concluded that the Trustee's Motion is well-founded and shall be granted, for the reasons stated herein. I also reserve the right to file supplemental Findings of Fact and Conclusions of Law regardless of whether a motion is filed pursuant to Bankruptcy Rule 7052 by any party in interest.

CONCLUSIONS OF LAW

The task of the Bankruptcy Court in a case such as this is to determine whether a settlement is in the best interest of an estate before approving it. Nellis v. Shugrue, 165 B.R. 115, 121 (S.D.N.Y. 1994); In re Drexel Burnham Lambert Group, Inc., 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991); In re Energy Coop, Inc., 886 F.2d 921, 927 (7th Cir. 1989). A court is not required to "decide the numerous questions of law and fact raised by [objecting parties] but rather must canvas the issues and see whether the settlement falls below the lowest point in the range of reasonableness." Nellis v. Shugrue, 165 B.R. at 121 (*citing* In re W.T.Grant Co., 699 F.2d 599, 608 (2nd Cir. 1983), *cert. denied,* 464 U.S. 822, 104 S.Ct. 89, 78 L.Ed. 2d 97 (1983)). *See also* Newman v. Stein, 464 F.2d 689, 693 (2nd Cir. 1972), *cert. denied sub. nom.,* Benson v. Newman, 409 U.S. 1039, 93 S.Ct. 521, 34 L.Ed.2d 488 (1972). A Bankruptcy Court must, however, make an independent determination when approving a settlement, and although the Court may consider the opinions of the trustee or debtor and their counsel that a settlement is fair and equitable, the judge cannot "accept the trustee's word that the settlement is reasonable nor may the judge merely rubberstamp a trustee's proposal." Nellis v. Shugrue, 165 B.R. at 122 (*citing* In re Ionosphere Clubs, Inc., 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff'd* 17 F.3d 60 (2nd Cir. 1994)). *See also* In re Energy Coop, Inc., 886 F.2d at 924.

The bankruptcy judge is ultimately responsible for an unbiased and informed

assessment of a settlement's terms, *see* Plummer v. Chemical Bank, 668 F.2d 654, 659 (2nd Cir. 1982), but should not conduct a "mini-trial" on the merits of the underlying litigation. *See* Nellis v. Shugrue, 165 B.R. at 122; *See also* In re Blair, 538 F.2d 849, 951 (9th Cir. 1976). As the Supreme Court has noted:

> There can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all of the factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

Protective Comm. for Indp. Stockholders of TNT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424, 88 S.Ct. 1157, 1163-64, 20 L.Ed.2d 1 (1968). In making such an assessment courts have set forth a number of factors for a court to consider; (1) the probability of success in the litigation; (2) the difficulties associated with collection; (3) the complexity of the litigation and the intendant expense, inconvenience and delay; and (4) the paramount interest of the creditors. *See* In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 292 (2nd Cir. 1992) cert. dismissed, ____ U.S. ___, 113 S.Ct. 1070, 122 L.Ed.2d 497 (1993); Nellis v. Shugrue, 165 B.R. at 122; In re Ionosphere Clubs, Inc., 156 B.R. 414, 428

(S.D.N.Y. 1993).

A number of courts have elaborated on the above-factors and have developed the following list of factors for a Bankruptcy Court to consider in approving a settlement: (1) the balance between the likelihood of success compared to the present and future benefits offered by the settlement; (2) the prospect of complex and protracted litigation if settlement is not approved; (3) proportion of the class members who do not object or who affirmatively support the proposed settlement; (4) the competency and experience of counsel who support the settlement; (5) the relative benefits to be received by individuals or groups within the class; (6) the nature and breadth of releases to be obtained by officers and directors; and (7) the extent to which settlement is the product of arms length bargaining. Nellis v. Shugrue, 165 B.R. at 122; In re Frost Brothers, 1992 W.L. 373488, slip op. at 4, No. 91 CIV. 5244 (S.D.N.Y. December 2, 1992).

In applying the above standards for reviewing any proposed compromise, I am persuaded that the Trustee has made a compelling case for approval. I am mindful of the fact that I am not to conduct a "mini-trial", much less fully try all issues on the merits but rather to canvas the issues and determine whether the settlement is within the "lowest point in the range of reasonableness." The Trustee clearly demonstrates in his Supplemental Brief filed May 10, 1994, that "lowest point" to be zero. In other words, there is a high likelihood

that if the settlement is not approved and if the case is tried on the merits, that the Trustee will recover nothing for creditors, and incur untold thousands of dollars in administrative expenses at the same time. To pursue this litigation would involve protracted litigation and application of complex questions of United States law and the law of several foreign countries. The outcome is highly questionable and would involve months or years of delay while accruing substantial expenses of administration. The Trustee has already carried his burden of showing that to collect $100,000.00 by way of compromise benefits creditors in this case. While it is true that SEMCO has disputed the outcome of some of the issues which would be triable it has not demonstrated that the Trustee's analysis is erroneous. The Trustee would bear the burden of proof on each and every one of those uncertain, contested, or disputed points and the Trustee stands before the Court, bearing a fiduciary responsibility to creditors in this case and a professional obligation of candor in not seeking to assert a claim on which he has no reasonable prospect of prevailing, telling the Court that in his professional judgment he cannot prevail on those issues. For the Trustee to do otherwise would violate his obligations under Bankruptcy Rule 9011 and his professional obligation as an officer of this Court, and for this Court to force him to trial without a clear showing that the Trustee's proposed settlement falls below the "lowest point in the range of reasonableness" would be unpardonable. Thus, the Trustee's Motion is granted.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Trustee's Motion to Compromise Disputed Claim is granted.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 1st day of June, 1994.